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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/825,128

04/16/2004

Carl-Goran Hagert

HW-8645

7993

26294

7590

06/23/2010

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EXAMINER

ARAJ, MICHAEL J

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

06/23/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/825,128 | Applicant(s) HAGERT, CARL-GORAN | |
| | Examiner MICHAEL J. ARAJ | Art Unit 3775 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 31, 2010 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray (U.S. Patent No. 3,877,424).

Murray discloses a system comprising a polyethylene chassis (18) [Col 2. line34-37] and one or more one-piece fixation elements (8) in the form of pins adapted to be received in a bone structure. The fixation elements are received in the polyethylene chassis wherein the polyethylene chassis in effect locks the fixation elements by friction to prevent axial, rotational and angular movement of the fixation element relative to the chassis. The fixation elements are to be received in a bone structure and are screwed

into the chassis and bone structure in such a way that screws move equidistantly in the chassis and the bone structure to produce a force neutral form. There are also no axial forces transferred to the screws after fixation. The chassis is received in a rigid bracing (epoxy resin) wherein the chassis is made of two parts (Fig. 7) received displaceable in an axial direction in relation to each other in the bracing that a gap is formed between the two chassis parts. This device is placed at a distance from and not in contact with the underlying bone structure or skin (see figure 1). The chassis is fixed to both sides of the fracture whereby a bridge span is formed between bone fragments of the bone.

Murray discloses the claimed invention except for the chassis being made of ultra high molecular weight polyethylene or the bracing being made of steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have created the chassis with ultra high molecular weight polyethylene or the bracing rod of steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Furthermore, it would have been obvious at the time the invention was made to make the device with a different material that would produce the same functioning device.

Response to Arguments

Applicant's arguments with respect to claims 11 and 15-22 have been considered but are moot in view of the new ground(s) of rejection. The amendments filed on March 31, 2010 overcome Murray as a 102 (b) reference but do not overcome the reference as

a 103 (a) as seen above. The only differences in the amendments made were that the polyethylene chassis is made of ultra high molecular weight polyethylene.

Applicant argues that Murray does not teach or suggest a chassis that has an elasticity giving locking effect by friction on fixation elements in such a way that the fixation elements are frictionally engaged by the chassis and thereby locked by friction regarding movement in axial, rotational, and angular directions. Once the epoxy resin hardens in the bladder, the chassis does lock the fixation elements in all directions of movement. The examiner agrees with the applicant that this device does not exhibit these features before the epoxy resin hardens. But the claim limitation does not require that these features occur as soon as the fixation elements are received by the chassis.

Applicant further argues that modifying the polyethylene bladder to be formed of UHMWPE would not be obvious to one of ordinary skill because UHMPWE is no a pliable material as defined by Murray. It would have been obvious at the time the invention was made to make the device with a different material that would produce the same functioning device. At the time that the epoxy resin hardens, the UHMPWE would show similar characteristics which is why it would be obvious to change the material.

As stated in the interview advisory mailed on March 29, 2010, it is recommended that a phone interview take place to expedite the prosecution of this application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael J Araj/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art Unit 3775